

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
February 15, 2005 (9:00 a.m.)**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Charles Falwell, Board member, presided. No other Board members were present.

Jennifer Kazzie appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc = Disciplinary Case
Lic = Licensing Application
RF = Recovery Fund Claim
Trades = Tradesmen Application

C = Complainant/Claimant
A = Applicant
R = Respondent/Regulant
W = Witness
Atty = Attorney

Participants

- | | |
|---|------------------------------------|
| 1. Rodney Antonio Shelton
t/a Next Renovation
File Number 2004-04073 (Disc) | Shelton – R
General Pompey – C |
| 2. GFW Enterprises
File Number 2004-04978 (Disc) | None |
| 3. Atlantic Concrete Inc.
File Number 2004-05034 (Disc) | Elois Rhodes – C
Ed Rhodes – C |
| 4. Atlantic Concrete Inc.
File Number 2005-00929 (Disc) | Elizabeth Gerber – C |
| 5. Atlantic Concrete Inc.
File Number 2005-01272 (Disc) | Ted Pleva – C
Mary Pleva – C |
| 6. Thomas E. Powers
t/a Powers Construction
File Number 2004-03470 (Disc) | Gaither Loy – C
Valerie Loy – W |

7. Rodney G. Barnes Jr.
t/a RGB Remodeling
File Number 2004-03873 (Disc)
No decision made

Rita Barnes – R

8. D Jack Construction
t/a Tidewater Deck & Fence
File Number 2004-03910 (Disc)

Donald Jackson – R

9. Theresa Hayes Thornton
t/a A-1 Concrete
File Number 2004-04937 (Disc)

Calvin Bullington – C
Mark Bullington – W

The meeting adjourned at 3:00 p.m.

BOARD FOR CONTRACTORS

Mark D. Kinser, Chairman

Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Rodney Antonio Shelton, t/a Next Renovation

File Number: 2004-04073
License Number: 2705078830

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On December 20, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Rodney Antonio Shelton ("Shelton"), t/a Next Renovation to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On February 15, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Rodney Shelton, Respondent; General Pompey ("Pompey"), Complainant; Jennifer Kazzie, Staff Member; and Charles Falwell, Presiding Board Member.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective January 1, 2003)

The contracts used in the transaction reflected an address different from the address of record for Shelton.

During the IFF, Shelton indicated one address was his home address and the other address was the business address. The address of record is still a current address for the license.

Therefore, I recommend Count 1 of this file be closed with a finding of no violation of 18 VAC 50-22-230.B.

Count 2: Board Regulation (Effective January 1, 2003)

In November 2003, Shelton entered into a contract with Pompey, in the amount of \$10,807.00 to perform renovations at the subject property. Shelton later entered into a second contract with Pompey, in the amount of \$16,227.00 to perform renovations at the subject property. Shelton holds a Class C contractor's license.

During the IFF, Shelton admitted he entered into a contract above his license limit. Shelton stated he was originally going to do the project with another person; however, the other person did not show up and Shelton took on the project himself.

Shelton's action of practicing in a class of license for which he is not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. Therefore, I recommend a monetary penalty of \$750.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 3: Board Regulation (Effective January 1, 2003) (TWO COUNTS)

The contracts used in the transaction failed to contain five of the provisions required by the Board's regulation.

During the IFF, Shelton stated he used a software program to prepare the contract. Shelton also stated he was new to the business.

Shelton's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$200.00 and remedial education for each count be imposed, for total of \$400.00 and remedial education imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 4: Board Regulation (Effective January 1, 2003)

In November 2003, Shelton commenced work at the subject property, but failed to obtain a required permit, as required by the Uniform Statewide Building Code. Shelton told the Board's agent he thought Pompey had pulled the permit.

The contractor is responsible for obtaining and/or ensuring permits are pulled prior to performing work. Shelton stated he thought Pompey pulled the permit; however, Shelton did not ensure Pompey pulled the permit.

Shelton's failure to obtain a permit is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 5: Board Regulation (Effective January 1, 2003)

Between January 2004 and April 2004, Pompey made several attempts to contact Shelton regarding completion of the work. In early April 2004, Pompey terminated the contract, and told Shelton he would complete the work himself. Shelton failed to complete several items.

During the IFF, Shelton stated once demolition was done, the job was much larger than he originally anticipated. Thus, Shelton ran out of funds before the job could be completed. Shelton stated he was new to doing contracting work on his own, but that he currently does work as a helper.

Shelton's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend a monetary penalty of \$750.00 be imposed.

By: _____
Charles Falwell
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: November 12, 2004 (December 1, 2004)

FILE NUMBER: 2004-04073
RESPONDENT: Rodney Antonio Shelton, t/a Next Renovation
LICENSE NUMBER: 2705078830
EXPIRATION: August 31, 2005

SUBMITTED BY: Shelby Smith-Hill
APPROVED BY: David C. Dorner

COMMENTS:
None.

Rodney Antonio Shelton, t/a Next Renovation ("Next Renovation"), was at all times material to this matter a licensed Class C contractor in Virginia (No.2705078830).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On April 5, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from General Pompey ("Pompey") regarding Next Renovation. (Exh. C-1)

On November 12, 2003, Next Renovation entered into a written contract, in the amount of \$10,807.00, with Pompey to perform renovation work at 88 Hodday Street, Matthews, Virginia 23109. (Exh. C-2)

On November 14, 2003, Next Renovation entered into a written contract, in the amount of \$16,227.00, with Pompey to perform renovation work at the subject property. (Exh. R-2) (NOTE: The November 14, 2003, contract incorporated the work originally agreed to in the November 12, 2003 contract, and superseded the November 12, 2003 contract.)

On November 15, 2003, Next Renovation commenced work. (Exh. C-1 and I-2)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-230. Change of name or address.

- B. Any change of address shall be reported in writing to the board within 30 days of the change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's not having reported a change of address.

FACTS:

The contracts used by Next Renovation in the transaction reflected the address 517 E. Main Street, Richmond, VA. (Exh. C-2 and R-2)

On April 5, 2004, the address of record for Next Renovation was 2546 Three Willow Court, Richmond, Virginia 23294. (Exh. I-1)

Next Renovation failed to report, in writing, to the Board within thirty (30) days of a change of address.

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

- B. The following are prohibited acts:

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

FACTS:

On August 22, 2003, Next Renovation was issued Class C contractor's license number 2705078830. (Exh. I-1)

Section 54.1-1100 of the Code of Virginia states "Class C contractors' perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is over \$1,000 but less than \$7,500 . . ."

Next Renovation practiced in a class of license for which it is not licensed.

3. Board Regulation (Effective September 1, 2001) (2 COUNTS)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - c. A listing of specified materials and work to be performed;
 - d. A "plain language" exculpatory clause;
 - e. A statement of assurance regarding local requirements for building permits, inspections and zoning;
 - h. The contractor's name, address, expiration date, class of license/certificate, and classification or specialty services; and
 - i. A statement providing that any modification to the contract which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contracts used by Next Renovation in the transaction failed to contain subsections: c., d., e., h., and i. (Exh. C-2 and R-2)

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

As of April 27, 2004, Next Renovation failed to obtain a required permit, in violation of Section 109.6.2 of the Virginia Uniform Statewide Building Code. (Exh. W-1)

In a written response received May 28, 2004, Next Renovation stated, "I thought Mr. Pompey had pull the permit." (Exh. R-4)

5. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

Between January 2004 and April 15, 2004, Pompey made several attempts to contact Next Renovation regarding completion of the work. Shelton's wife told Pompey the work would be completed or Shelton would get in touch with Pompey. However, Pompey never received a return call from Shelton. (Exh. I-2)

On April 2, 2004, Pompey sent Next Renovation letter, via certified mail, regarding his dissatisfaction with the work and requesting Next Renovation remove all its tools and materials from the property within two (2) days. The certified letter was unclaimed by Next Renovation and returned to Pompey. (Exh. C-4)

On April 5, 2004, Pompey met Shelton of Next Renovation at the subject property and advised Shelton to leave the subject property because Pompey decided he would complete the work himself. (Exh. I-2)

As of May 13, 2004, Next Renovation failed to complete the following items:

- Foundation work
- Vapor barrier
- Insulation
- Replace garage door
- Install front porch and place a roof over it. (Exh. I-2)

In a written response received May 28, 2004, Next Renovation stated, "The work not completed was R-19 to crawl and rebuilding the porch to exact side of existing 13 ft by 5 ft but with support post and banded to the house." Next Renovation further stated work stopped on March 28, 2004. (Exh. R-4)

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: GFW Enterprises

File Number: 2004-04978
License Number: 2705075982

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On December 20, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to GFW Enterprises ("GFW") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was returned by the United States Postal Service, and marked as "Not Deliverable as Addressed, Unable to Forward."

On February 3, 2005, an Amended Report of Findings was mailed, via certified mail, to GFW to the address of record. The certified mail was returned by the United States Postal Service, and marked as "Not Deliverable as Addressed, Unable to Forward."

On February 15, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Jennifer Kazzie, Staff Member; and Charles Falwell, Presiding Board Member. Neither Robert Stafford, Responsible Management for GFW, nor anyone on its behalf appeared at the IFF.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Amended Report of Findings:

Count 1: Board Regulation (Effective January 1, 2003)

The contract used in the transaction reflected the name GFW Enterprises Inc. The Board issued the license to GFW Enterprises, a sole proprietorship.

GFW's failure to operate in the name in which the license was issued is a violation of Board Regulation 18 VAC 50-22-230.A. Therefore, I recommend a monetary penalty of \$400.00 be imposed.

Count 2: Board Regulation (Effective January 1, 2003)

Bonnie Hickey ("Hickey") contracted with GFW to perform electrical work at the subject property. In March 2004, Hickey paid GFW \$4,000.00 towards the contract amount of \$8,300.00. GFW commenced work at the subject property, but did not complete the work. Hickey attempted to contact GFW regarding the incomplete work. In late April 2004, GFW promised to return to the subject property to continue work in May 2004. GFW returned to the subject property to resume work. GFW had completed less than half of the work contracted for when it requested Hickey pay more money. Hickey refused, and GFW cut and disconnected wires at the subject property. GFW did not complete the work.

In my opinion, GFW's actions of not completing the work created a hardship for Hickey because of the necessity to meet a deadline.

GFW's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

Count 3: Board Regulation (Effective January 1, 2003)

In June 2004, the Board's agent requested GFW provide a written response and supporting documents to the complaint filed with the Board. The Board's agent made a subsequent attempt to contact GFW by certified mail. GFW failed to respond to the Board's agent's request.

GFW's failure to respond to the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.13. Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

By: _____
Charles Falwell
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

AMENDED REPORT OF FINDINGS

BOARD: Board of Contractors
DATE: November 2, 2004 (revised November 22, 2004);
Amended on February 3, 2005

FILE NUMBER: 2004-04978
RESPONDENT: GFW Enterprises
LICENSE NUMBER: 2705075982
EXPIRATION: January 31, 2006

SUBMITTED BY: Sherell Queen
APPROVED BY: Linda J. Boswell

COMMENTS:

None.

GFW Enterprises ("GFW") was at all times material to this matter a licensed Class B contractor in Virginia (No. 2705075982).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On June 17, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Bonnie Hickey ("Hickey") of Pets Plus Inc. regarding Robbie Stafford and GFW Enterprises Inc. (Exh. C-1)

Hickey received a verbal quote, in the amount of \$8,300.00 from GFW to perform electrical work at 60 Susa Drive, Suite 117, Stafford, Virginia. (Exh. C-1)

On March 25, 2004, Pets Plus Inc. received an invoice, in the amount of \$8,300.00, from GFW Enterprises Inc. for electrical work performed at the subject property. (Exh. C-2)

On March 25, 2004, Pets Plus Inc. paid GFW Enterprises Inc. \$4,000.00 by check. (Exh. C-3)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-230. Change of name or address.

- A. A licensee must operate under the name in which the license is issued. Any name change shall be reported in writing to the board within 30 days of the change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's not having reported a change of name.

FACTS:

On January 22, 2004, GFW was issued Class B contractor's license number 2705075982 as a sole proprietorship. (Exh. I-1)

GFW failed to operate in the name in which the license was issued.

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

- B. The following are prohibited acts:

14. Abandonment (defined as the unjustified cessation of work under the contract for a period of 30 days or more).

FACTS:

On March 25, 2004, GFW commenced work. (Exh. C-1)

After April 27, 2004, GFW did not perform work at the subject property for several weeks. (Exh. C-1)

Hickey attempted to contact GFW, via telephone and facsimile, regarding the incomplete work. (Exh. C-1)

On April 29, 2004, GFW contacted Hickey and promised to return to the subject property on May 13, 2004. (Exh. C-1)

On May 19, 2004, GFW returned to the subject property to perform work. (Exh. C-1)

As of May 20, 2004, GFW completed less than half of the work contracted for. On May 20, 2004, GFW requested Hickey pay more money. When Hickey did not pay GFW more money, GFW cut and disconnect wires at the subject property. (Exh. C-1)

On May 21, 2004, Hickey contacted the County of Stafford Department of Code Administration to change the contractor's name on the permit. As of May 21, 2004, GFW failed to perform the following:

- Puppy showroom – 4 lights not complete and 0 plugs installed
- Holding room – 2 lights (1 complete/1 not) and 3 plugs not complete
- Puppy isolation – 1 light complete and 2 plugs not complete
- Bathing room – 5 lights (4 complete/1 not) and 1 plug not complete
- Grooming room – 4 lights not complete and 3 plugs not complete. (Exh. C-5)

On May 24, 2004, Hickey obtained electrical permit number 243889 for the electrical work to be performed at the subject property. (Exh. C-4)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

13. Failing to respond to an investigator or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor.

FACTS:

On June 30, 2004, Investigator Diana Santoni-Bell, the Board's agent, made a written request to GFW at 6114 Pella Lane, Fredericksburg, Virginia, 22407, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the written response be received by July 16, 2004. (Exh. I-2)

On July 23, 2004, the Board's agent made a written request to GFW, via certified mail, at 6114 Pella Lane, Fredericksburg, Virginia, 22407, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the written response be received by August 6, 2004. (Exh. I-3)

On July 28, 2004, the Fredericksburg, Virginia Postmaster certified mail is delivered to GFW at 6114 Pella Lane, Fredericksburg, Virginia 22407. (Exh. I-5)

On August 16, 2004, the certified letter was returned to the Board's agent by the United States Postal Service because it was unclaimed by GFW. (Exh. I-4)

As of November 2, 2004, GFW failed to respond to an investigator seeking information in the investigation of a complaint filed with the board.

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Atlantic Concrete Inc.

File Number: 2004-05034
License Number: 2705068729

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On December 20, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Atlantic Concrete Inc. ("Atlantic") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was returned by the United States Postal Service, and marked as "Unclaimed."

On February 15, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Elois and Ed Rhodes ("the Rhodes"), Complainants; Jennifer Kazzie, Staff Member; and Charles Falwell, Presiding Board Member. Neither Shirley Thornton ("Thornton"), Responsible Management for Atlantic, nor anyone on its behalf appeared at the IFF.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective January 1, 2003)

The contract used in the transaction failed to contain five of the provisions required by the Board's regulation. Atlantic's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$250.00 be imposed.

Count 2: Board Regulation (Effective January 1, 2003)

In April 2004, the Rhodes contracted with Atlantic to replace a concrete slab and sidewalk at the subject property. In May 2004, Atlantic demolished the existing concrete, and removed it from the subject property. Between May 2004 and October 2004, the Rhodes

left several messages for Atlantic regarding the completion of work. Atlantic did not contact the Rhodes. The Rhodes hired another contractor to complete the work.

During the IFF, Ed Rhodes stated the last time he spoke to anyone from Atlantic was May 7, 2004.

Atlantic's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$1,000.00 and license revocation be imposed.

Count 3: Board Regulation (Effective January 1, 2003)

The Rhodes paid Atlantic \$750.00 towards the contract amount of \$1,500.00. Atlantic failed to complete the work. Atlantic also promised to refund the Rhodes money, but failed to do so.

During the IFF, the Rhodes stated Atlantic has not refunded the money as promised.

Atlantic's retention of funds received for work not performed, or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

By: _____
Charles Falwell
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: November 22, 2004 (revised December 6, 2004)

FILE NUMBER: 2004-05034
RESPONDENT: Atlantic Concrete Inc.
LICENSE NUMBER: 2705068729
EXPIRATION: April 30, 2006

SUBMITTED BY: Michael Heaney
APPROVED BY: David Dorner

COMMENTS:

None.

Atlantic Concrete Inc. ("Atlantic") was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705068729).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On June 14, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Elois and Ed Rhodes ("the Rhodes") regarding Atlantic. (Exh. C-1)

On April 1, 2004, Atlantic entered into a written contract, in the amount of \$1,500.00, with the Rhodes to replace a concrete slab and sidewalk at 2213 Halprin Court, Norfolk, Virginia 23518. (Exh. C-2)

On May 6, 2004, the Rhodes paid Atlantic \$750.00 by check. (Exh. C-3)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - a. When work is to begin and the estimated completion date;
 - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
 - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by Atlantic in the transaction failed to contain subsections: a., d., e., h., and i. (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

14. Abandonment (defined as the unjustified cessation of work under the contract for a period of 30 days or more).

FACTS:

On May 6, 2004, Atlantic removed the chain link fence and broke up the old concrete. On May 10, 2004, Atlantic removed the old concrete from the subject property. The last day Atlantic performed work at the subject property was May 10, 2004. (Exh. C-1)

The Rhodes left several messages for Atlantic. (Exh. C-1) Between May 10, 2004 and October 26, 2004, Atlantic have not contacted the Rhodes. (Exh. I-2)

The Rhodes hired CDC Construction to complete the job. On June 15, 2004, CDC Construction completed the job at the subject property. (Exh. I-2)

On October 8, 2004, Shirley Thornton ("Thornton"), on behalf of Atlantic, stated there was a dispute with the Rhodes over when to pour the concrete after the site was prepared because of weather and availability of a work crew. (Exh. I-3)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS:

In addition to the facts outlined in Count 2:

On October 8, 2004, Thornton stated Atlantic would refund the \$750.00 payment received from the Rhodes. (Exh. I-3)

As of November 19, 2004, Atlantic failed to contact the Rhodes regarding the refund. As of November 19, 2004, the Rhodes did not receive any refund from Atlantic. (Exh. I-4)

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Atlantic Concrete Inc.

File Number: 2005-00929
License Number: 2705068729

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On December 20, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Atlantic Concrete Inc. ("Atlantic") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was returned by the United States Postal Service, and marked as "Unclaimed."

On February 15, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Elizabeth Gerber ("Gerber"), Complainant; Jennifer Kazzie, Staff Member; and Charles Falwell, Presiding Board Member. Neither Shirley Thornton ("Thornton"), Responsible Management for Atlantic, nor anyone on its behalf appeared at the IFF.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective January 1, 2003)

The contract used in the transaction failed to contain five of the provisions required by the Board's regulation. Atlantic's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$250.00 be imposed.

Count 2: Board Regulation (Effective January 1, 2003)

In July 2004, William and Elizabeth Gerber ("the Gerbers") contracted with Atlantic to replace a concrete slab, sidewalk, and patio at the subject property. In October 2004, Gerber learned Atlantic did not obtain a required building permit to perform work at the

subject property, in violation of the Uniform Statewide Building Code. The Gerbers obtained the permit themselves.

During the IFF, Gerber stated the City of Virginia Beach was contacted during the investigation of the complaint and confirmed a permit was not obtained by Atlantic. Gerber also stated she was contacted by the City of Virginia Beach and subsequently obtained the permit herself.

Atlantic's failure to obtain a permit is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$500.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 3: Board Regulation (Effective January 1, 2003)

Atlantic performed work at the subject property. In their complaint, the Gerbers noted several defects in the work performed by Atlantic. The Gerbers hired another contractor to tear out and replace the concrete installed by Atlantic.

The photographs of the work performed by Atlantic show incompetence of workmanship.

Atlantic's action of improperly performing work is a violation of Board Regulation 18 VAC 50-22-260.B.5. Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

Count 4: Board Regulation (Effective January 1, 2003)

Atlantic left one full section unpoured. The Gerbers made several calls to Atlantic regarding the incomplete work. Atlantic failed to respond. Atlantic informed the Board's agent that Atlantic was directed not to finish the work.

During the IFF, Gerber stated Atlantic ran out of materials and did not return to pour the section.

Atlantic's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 5: Board Regulation (Effective January 1, 2003)

The Gerbers paid Atlantic the full amount of the \$3,600.00 contract. Atlantic failed to complete the work, and did not refund any money.

Atlantic's retention of funds received for work not performed, or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

Count 6: Board Regulation (Effective January 1, 2003)

In November 2004, in the Virginia Beach General District Court, William Gerber obtained a judgment against Atlantic, in the amount of \$3,600.00. Atlantic has failed to satisfy the judgment.

Atlantic's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. Therefore, I recommend a monetary penalty of \$1,000.00 and license revocation be imposed.

By: _____

Charles Falwell
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: November 22, 2004 (revised December 6, 2004)

FILE NUMBER: 2005-00929
RESPONDENT: Atlantic Concrete Inc.
LICENSE NUMBER: 2705068729
EXPIRATION: April 30, 2006

SUBMITTED BY: Michael Heaney
APPROVED BY: David Dorner

COMMENTS:

None.

Atlantic Concrete Inc. ("Atlantic") was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705068729).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On August 23, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from William and Elizabeth Gerber ("the Gerbers") regarding Atlantic. (Exh. C-1)

On July 7, 2004, Atlantic entered into a written contract, in the amount of \$3,600.00, with the Gerbers to replace a concrete slab, sidewalk, and patio at 1928 Rossini Drive, Virginia Beach, Virginia 23454. (Exh. C-2)

On July 7, 2004, the Gerbers paid Atlantic \$1,800.00 by check. On July 16, 2004, the Gerbers paid Atlantic \$1,800.00 by check. (Exh. C-3)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - a. When work is to begin and the estimated completion date;
 - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
 - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by Atlantic in the transaction failed to contain subsections: a., d., e., h., and i. (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

In October 2004, Elizabeth Gerber learned Atlantic did not obtain a building permit and was notified by the City of Virginia Beach a permit was required. (Exh. I-3)

On October 8, 2004, Shirley Thornton ("Thornton"), on behalf of Atlantic, stated Atlantic did not obtain a building permit. Donald Coleman ("Coleman"), general manager of Atlantic, further stated, "we were not doing the apron, we just didn't get one." (Exh. I-2)

On October 12, 2004, the Gerbers obtained building permit number 200414701B0 for replacement of a driveway, right of way, and sidewalk at the subject property. (Exh. I-6)

Atlantic failed to obtain a required permit, in violation of Section 111.1 of the Virginia Uniform Statewide Building Code, for work performed at the subject property. (Exh. I-5)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

5. Negligence and/or incompetence in the practice of contracting.

FACTS:

Atlantic poured the cement on a wet subgrade. The forms laid by Atlantic were not straight and the walkways narrowed. Adjoining sections of the driveway and patio are not even and the main sections of the driveway are not level. (Exh. C-1)

On July 30, 2004, the Gerbers hired R. J. Bosley Renovations, in the amount of \$4,150.00, to tear out and replace the concrete installed by Atlantic at the subject property. (Exh. C-4)

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

Atlantic left one full section unpoured. The Gerbers made several calls to Atlantic, but Atlantic failed to respond. (Exh. C-1)

On October 8, 2004, Thornton stated they felt they had been fired from the job. Thornton also stated Atlantic ran out of concrete and told the Gerbers that Atlantic would pour the last 1 ½ yard of concrete the next day. Thornton further stated on the next day, at the Gerbers direction, the Gerbers' neighbors told Atlantic the concrete was not good and not to finish the job. (Exh. I-2)

On October 29, 2004, Elizabeth Gerber stated Atlantic poured the concrete and left a portion undone. Elizabeth Gerber also stated she told Atlantic not to use concrete that had been in the cement truck on the site for over 3 hours and had been continuously watered down. (Exh. I-3)

5. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS:

In addition to the facts outlined in Count 3 and Count 4:

On July 26, 2004, in the Virginia Beach General District Court, William Gerber filed a Warrant in Debt against Atlantic. (Exh. I-4)

6. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

On November 1, 2004, in the Virginia Beach General District Court, William Gerber was awarded a \$3,600.00 judgment against Atlantic. As of December 6, 2004, Atlantic failed to satisfy the judgment. (Exh. I-4)

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Atlantic Concrete Inc.

File Number: 2005-01272
License Number: 2705068729

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On December 20, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Atlantic Concrete Inc. ("Atlantic") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was returned by the United States Postal Service, and marked as "Unclaimed."

On February 15, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Mary and Ted Pleva ("the Plevas"), Complainants; Jennifer Kazzie, Staff Member; and Charles Falwell, Presiding Board Member. Neither Shirley Thornton ("Thornton"), Responsible Management for Atlantic, nor anyone on its behalf appeared at the IFF.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

During the IFF, the Plevas stated the last day they had contact with Atlantic was December 22, 2004.

Count 1: Board Regulation (Effective January 1, 2003)

The contract used in the transaction failed to contain five of the provisions required by the Board's regulation. Atlantic's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$250.00 be imposed.

Count 2: Board Regulation (Effective January 1, 2003)

In August 2004, Ted and Mary Pleva ("the Plevas") contracted with Atlantic to replace a concrete driveway and sidewalk, and perform work on the driveway apron at the subject property. After Atlantic commenced work, the Plevas obtained a building permit for the work performed at the subject property. Atlantic informed the Board's agent it did not obtain the permit. Atlantic did not obtain a required building permit to perform work at the subject property, in violation of the Uniform Statewide Building Code.

Atlantic's failure to obtain a permit is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$500.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 3: Board Regulation (Effective January 1, 2003)

During construction, Atlantic caused damage to the Plevas garage and water well pump. The Plevas obtained estimates totaling \$877.00 to repair the damages caused by Atlantic.

Atlantic's action of improperly performing work is a violation of Board Regulation 18 VAC 50-22-260.B.5. Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

Count 4: Board Regulation (Effective January 1, 2003)

After damaging the subject property, Atlantic promised Ted Pleva it would correct the driveway, repair the garage, and provide a reimbursement for damage to the water well pump, as well as for additional repairs. Atlantic failed to make the repairs and provide the reimbursement as promised.

Atlantic's failure to honor verbal promises to repair and reimburse is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

Count 5: Board Regulation (Effective January 1, 2003)

In addition to its failure to correct its work and repair damage it caused to the subject property, Atlantic also failed to finish the end section of the driveway.

Atlantic's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

Count 6: Board Regulation (Effective January 1, 2003)

The Plevas paid Atlantic the full amount of the \$2,900.00 contract amount. The contract specified Atlantic would receive the last half of the contract amount upon completion of the work. Atlantic failed to complete the work, and the Plevas claim they did not authorize the final payment made to Atlantic.

During the IFF, the Plevas stated the second payment by credit card was not authorized. The Plevas also stated they disputed the credit card charge.

Atlantic's retention of funds received for work not performed, or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

By: _____
Charles Falwell
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: November 24, 2004 (revised December 6, 2004)

FILE NUMBER: 2005-01272
RESPONDENT: Atlantic Concrete Inc.
LICENSE NUMBER: 2705068729
EXPIRATION: April 30, 2006

SUBMITTED BY: Michael Heaney
APPROVED BY: David Dorner

COMMENTS:

None.

Atlantic Concrete Inc. ("Atlantic") was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705068729).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On September 20, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Ted and Mary Pleva ("the Plevas") regarding Atlantic. (Exh. C-1)

On August 12, 2004, Atlantic entered into a written contract, in the amount of \$2,900.00, with the Plevas to replace a concrete driveway and sidewalk and install a wire mesh and flair on the driveway apron at 5708 Barco Drive, Virginia Beach, Virginia 23464. (Exh. C-2)

On August 13, 2004, the Plevas paid Atlantic \$1,500.00 by credit card. On August 19, 2004, the Plevas paid Atlantic \$1,400.00 by credit card. (Exh. C-6)

On September 1, 2004, Atlantic poured the concrete but ran out before completing the driveway. (Exh. C-1)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - a. When work is to begin and the estimated completion date;
 - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
 - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by Atlantic in the transaction failed to contain subsections: a., d., e., h., and i. (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

On August 24, 2004, the Pleva obtained building permit number 200412411B0 for the work performed at the subject property. (Exh. I-5)

On October 8, 2004, Shirley Thornton ("Thornton"), on behalf of Atlantic, stated they did not obtain a building permit. (Exh. I-2)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

5. Negligence and/or incompetence in the practice of contracting.

FACTS:

While Atlantic performed work, a backhoe used by Atlantic to break up the old concrete driveway caused damage to an interior garage wall, garage gutters, exterior trim, exterior brick work, and a well water pump. (Exh. I-3)

On September 24, 2004, the Plevas obtained a written estimate, in the amount of \$150.00, to replace a gutter and downspout at the subject property. (Exh. C-3)

On September 30, 2004, the Plevas received a work order, in the amount of \$237.00, from Aaron's Well & Pump Service for repairing a well pump at the subject property. (Exh. C-5)

On October 5, 2004, the Plevas obtained a written estimate, in the amount of \$490.00, to hang plaster board and replace a gutter and downspout at the subject property. (Exh. C-4)

On October 8, 2004, Thornton acknowledged the damage to the Plavas garage was caused by Atlantic's workers using a backhoe when breaking up the old concrete driveway. Thornton stated Atlantic repaired the garage brick work. Thornton further stated Atlantic would repair the garage gutters, exterior trim, and interior damaged wall, as well as, reimburse the Plevas for having the damaged well water pump repaired and \$100.00 for other repairs. (Exh. I-2)

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

In addition to the facts outlined in Count 3:

On October 20, 2004, Donald Coleman ("Coleman"), general manager for Atlantic, promised Ted Pleva the concrete would be replaced to correct the driveway and all repairs to the garage would be finished. Coleman told Ted Pleva that Atlantic would reimburse him for the well water pump repair and give him \$100.00 for additional repairs Ted Pleva performed himself. Coleman also told Ted Pleva all the work would be done in the next two weeks. (Exh. I-4)

On November 2, 2004, Atlantic started repair of the interior garage wall but the plasterboard was crooked and not cut to size. Coleman offered to reimburse Ted Pleva the cost of repair to the garage interior, trim, and gutter. Coleman again promised to have all corrective work done in the next week. (Exh. I-4)

Between November 4, 2004 and November 23, 2004, the Plevas made several attempts to contact Atlantic, via telephone calls and visits to the office, regarding the repairs and reimbursements, but Atlantic failed to respond. (Exh. I-4)

As of November 23, 2004, Atlantic failed to honor a promise to make repairs and provide a reimbursement. (Exh. I-4)

5. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

In addition to the facts outlined in Count 3 and Count 4:

Atlantic failed to finish the end section of the driveway. (Exh. I-3)

As of November 23, 2004, Atlantic failed to complete work at the subject property. (Exh. I-4)

6. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS:

In addition to the facts outlined in Count 3, Count 4, and Count 5:

The contract specified, "One half down at start of job. Balance to be paid in full at completion of pour." (Exh. C-2)

The Plevas did not authorize the \$1,400.00 credit card payment charged to their credit card on August 19, 2004. (Exh. I-3)

Atlantic retained funds for work not performed or performed in part.

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Thomas E. Powers, t/a Powers Construction

File Number: 2004-03470
License Number: 2705070011

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On December 20, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Thomas E. Powers ("Powers"), t/a Powers Construction to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received. The Notice was also mailed, via certified mail, to Powers at 28099 Harborton Road, Harborton, Virginia 23389. The certified mail was returned by the United States Postal Service, and marked as "Attempted, Not Known."

On February 15, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Gaither Loy ("Loy"), Complainant; Valerie Loy, Witness; Jennifer Kazzie, Staff Member; and Charles Falwell, Presiding Board Member.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective January 1, 2003)

In May 2003, Loy received a written estimate from Powers to perform improvements at the subject property. The estimate was signed by Powers, but not by Loy. Powers performed work, and Loy paid for the work.

During the IFF, Loy stated Powers presented the estimate. Loy also stated he verbally accepted the estimate and paid the deposit.

Powers's failure to fully execute a contract prior to commencing work or accepting payments is a violation of Board Regulation 18 VAC 50-22-260.B.8. Therefore, I recommend a monetary penalty of \$400.00 be imposed.

Count 2: Board Regulation (Effective January 1, 2003)

Powers performed new construction at the subject property. The Board issued Powers a Class C contractor's license with commercial improvement contracting (CIC) and home improvement contracting (HIC) specialties only.

Powers's action of practicing in a specialty service for which he is not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 3: Board Regulation (Effective January 1, 2003)

In June 2004, Powers submitted a building permit application to the County of Accomack, which specified Powers would install 6" by 6" posts. The building permit was approved; however Powers installed 4" by 4" posts instead.

During the IFF, Loy stated Powers installed 4" x 4" posts and did not provide any explanation why the different posts were installed.

Powers's actions are a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$750.00 be imposed.

Count 4: Board Regulation (Effective January 1, 2003)

Between July 2003 and November 2003, Loy made several attempts to contact Powers regarding the incomplete work. Powers failed to complete work, and later testified in court that he failed to complete work because his grandmother died.

During the IFF, Loy stated Powers told him the project would take approximately 4 to 6 weeks and work would begin in early June 2003. Powers told Loy that his grandmother died. Loy gave Powers until the end of 2003 to complete the work; however, Powers has not completed the work.

Powers's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$1,000.00 and license revocation be imposed.

Count 5: Board Regulation (Effective January 1, 2003)

At the request of Powers, Loy paid Diane Parks \$4,000.00 toward the contract amount of \$7,500.00. In June 2004, Loy requested Powers refund the money. Powers refused, and testified in court that he believed Loy was not entitled to the money because Powers had performed some work.

Powers's retention of funds received for work not performed, or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$1,500.00 and license revocation be imposed.

Count 6: Board Regulation (Effective January 1, 2003)

In October 2004, in the General District Court for Accomack County, Loy obtained a judgment against Powers, in the amount of \$4,000.00. Powers has failed to satisfy the judgment.

Powers's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. Therefore, I recommend a monetary penalty of \$2,000.00 and license revocation be imposed.

By: _____

Charles Falwell
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: November 5, 2004 (revised November 22, 2004)

FILE NUMBER: 2004-03470
RESPONDENT: Thomas E. Powers
LICENSE NUMBER: 2705070011
EXPIRATION: August 31, 2006

SUBMITTED BY: David C. Dorner
APPROVED BY: M. Wayne Brown

COMMENTS:

None.

Thomas E. Powers ("Powers"), t/a Powers Construction, was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705070011).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On February 24, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Gaither Wayne Loy ("Loy") regarding Powers. (Exh. C-1)

On May 26, 2003, Loy received a written estimate, in the amount of \$7,5000.00, from Powers to install framing, sheathing, and shingling on two roofs for cabin and one roof over top of camper, close in a front deck for screen porch, and frame camper in at Virginia Landing, Oceanside Village, Accomack County, Virginia. The estimate was signed by Powers but not Loy. (Exh. C-2)

On May 26, 2003, at the request of Powers, Loy paid Diane Parks \$4,000.00 by check. (Exh. C-3 and C-4)

On August 1, 2003, the footing inspection was not approved because the footing was full of water. (Exh. I-1)

By February 19, 2004, Powers installed support beams and one header but did not install the roof, siding, or windows. (Exh. C-1)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

FACTS:

On October 27, 2004, during trial, Powers testified he did not consider the estimate to be a legal contract. (Exh. I-2)

Powers failed to obtain Loy's signature prior to commencement of work acceptance of payments.

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

FACTS:

On August 20, 2002, Powers was issued Class C contractor's license number 2705070011 with the commercial improvement contracting ("CIC") and home improvement contracting ("HIC") specialties. (Exh. I-6)

18 VAC 50-22-30 of the January 1, 2003, Virginia Board for Contractors regulations states, "Home Improvement Contracting' (Abbr: HIC) means that service which provides for repairs or improvements to one-family and two-family residential buildings or structures annexed to real property . . . It does not include high rise buildings, buildings with more than two dwelling units, or new construction functions beyond the existing building structure other than decks, patios, driveways and utility out buildings."

Powers practiced in a specialty service for which he is not licensed.

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

On June 24, 2003, Powers submitted an application for a building permit to the County of Accomack for the work to be performed at the subject property. On the Framing Specification Sheet with the application, Powers indicated the foundation sizes and materials would be 6" x 6" posts. (Exh. I-1)

On June 27, 2003, Powers was issued building permit number B2003-0473 to enclose a travel trailer and build a roof at the subject property. (Exh. I-1)

Powers installed 4" x 4" foundation posts instead of 6" x 6" posts. (Exh. C-5 and I-2)

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

14. Abandonment (defined as the unjustified cessation of work under the contract for a period of 30 days or more).

FACTS:

Between July 2003 and November 2003, Loy made several attempts to contact Powers regarding the incomplete, but Powers did not respond. (Exh. C-1 and C-4)

In a letter dated June 30, 2004, Loy denied contacting Powers and requesting no more work be done. (Exh. C-4)

As of October 27, 2004, Powers failed to complete the work contracted for. (Exh. I-3)

On October 27, 2004, during trial, Powers testified he did not complete the work because his grandmother died. (Exh. I-2)

5. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS:

In a letter dated June 30, 2004, Loy requested Powers refund the \$4,000.00 deposit within fifteen (15) days. (Exh. C-4)

On October 27, 2004, during trial, Powers testified he did not believe Loy was entitled to \$4,000.00 because some work was performed. (Exh. I-2)

6. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

On October 27, 2004, in the General District Court for Accomack County, Loy was awarded a \$4,000.00 judgment against Powers. As of November 22, 2004, Powers failed to satisfy the judgment. (Exh. I-5)

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: D Jack Construction, t/a Tidewater Deck & Fence

File Number: 2004-03910
License Number: 2705048014

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On December 20, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to D Jack Construction, t/a Tidewater Deck & Fence ("Tidewater") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received. The Notice was also mailed, via certified mail, to Tidewater at 604 D Green Tree Road, Chesapeake, Virginia 23320. The certified mail to the second address was returned by the United States Postal Service, and marked as "Undeliverable as Addressed, Unable to Forward."

On February 15, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Donald Jackson ("Jackson"), Responsible Management for Tidewater, Respondent; Jennifer Kazzie, Staff Member; and Charles Falwell, Presiding Board Member.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective September 1, 2001)

The contract used in the transaction failed to contain five of the provisions required by the Board's regulation.

During the IFF, Jackson admitted the contract did not include subsections a. and h. Jackson stated the contract did include subsection f., but the number of days for cancellation was not filled out.

Tidewater's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$250.00 be imposed.

Count 2: Board Regulation (Effective September 1, 2001)

In October 2001, Gerald Kanter ("Kanter") contracted with Tidewater to install a fence at the subject property. Tidewater commenced work, but did not obtain a fence permit prior to starting, as required by the City of Chesapeake. Jackson informed the Board's agent that Kanter was supposed to obtain all permits for the job.

During the IFF, Jackson stated Kanter told the salesman that Kanter would obtain the permit. Tidewater was responsible for ensuring a permit was obtained. Jackson also stated Tidewater currently documents the permit number and makes a copy of the permit if the homeowner agrees to obtain the permit instead of Tidewater.

Tidewater's failure to obtain a permit is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$250.00 be imposed.

Count 3: Board Regulation (Effective September 1, 2001)

Tidewater began work at the subject property on October 20, 2001, and last performed work at the subject property on October 30, 2001. Tidewater failed to complete a section of the fence, and install pool legal gates.

During the IFF, Jackson stated Kanter provided the material for the project. While performing work, Tidewater ran short of materials and requested Kanter provide additional material to complete the job. Jackson also stated the old gates were reinstalled, but the City of Chesapeake changed its code after the old gates were reinstalled and the gates did not meet the new code. Jackson further stated he offered to replace the gates if Kanter provided new gates. Tidewater did not complete the work because it did not have the materials, which were to be provided by Kanter, required to complete the project.

Therefore, I recommend Count 3 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.15.

By: _____
Charles Falwell
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: November 10, 2004 (revised December 1, 2004)

FILE NUMBER: 2004-03910
RESPONDENT: D Jack Construction, t/a Tidewater Deck & Fence
LICENSE NUMBER: 2705048014
EXPIRATION: January 31, 2005

SUBMITTED BY: Valerie J. Matney
APPROVED BY: David C. Dorner

COMMENTS:

Issues regarding improper screws are not addressed in this complaint as there was no specification on the type of screws in the contract. In addition, the gate specifications meeting pool code are not addressed as there was never a permit issued, nor was an inspection performed.

D Jack Construction, t/a Tidewater Deck & Fence ("Tidewater") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705048014).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On March 23, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Gerald Kanter ("Kanter") regarding Tidewater. (Exh. C-1)

On October 20, 2001, Tidewater entered into a written contract, in the amount of \$8,668.00, with Kanter to install a fence at 1313 Murray Drive, Chesapeake, Virginia 23322. (Exh. C-2)

On October 20, 2001, Tidewater commenced work. (Exh. I-2)

1. Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - a. When work is to begin and the estimated completion date;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - f. Disclosure of the cancellation rights of the parties;
 - h. Contractor's license number, expiration date, class of license, and classifications or specialty services; and
 - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by Tidewater in the transaction failed to contain subsections: a., e., f., h., and i. (Exh. C-2)

2. Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

In a written response received May 4, 2004, Donald F. Jackson ("Jackson"), Responsible Management for Tidewater, stated "Mr. Kanter was supposed to have all permits for this job." (Exh. R-1)

As of September 29, 2004, Tidewater failed to obtain a required fence permit for work performed at the subject property, in violation of Section 20 of the Chesapeake Zoning Ordinance. (Exh. I-3)

3. Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

The last day Tidewater performed work at the subject property was October 30, 2001. (Exh. I-2)

As of September 22, 2004, Tidewater failed to complete a section of the fence at the far right corner of the property and install pool legal gates. (Exh. C-2)

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Theresa Hayes Thornton, t/a A-1 Concrete

File Number: 2004-04937
License Number: 2705083399

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On December 20, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Theresa Hayes Thornton, t/a A-1 Concrete ("A-1 Concrete") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was returned by the United States Postal Service, and marked as "Unclaimed."

On February 15, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Calvin Bullington ("Bullington"), Complainant; Mark Bullington ("M. Bullington"), Witness; Jennifer Kazzie, Staff Member; and Charles Falwell, Presiding Board Member. Neither Theresa Thornton, nor anyone on behalf of A-1 Concrete appeared at the IFF.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective January 1, 2003)

The contract used in the transaction failed to contain six of the provisions required by the Board's regulation. A-1 Concrete informed the Board's agent it was unaware of the Board's contract requirements. A-1 Concrete's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$400.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 2: Board Regulation (Effective January 1, 2003)

In April 2004, Bullington contracted with A-1 Concrete to install driveways and perform other work at the subject property. A-1 Concrete commenced work, but did not finish. After being contacted regarding the incomplete work, A-1 Concrete made appointments to pour the concrete, but failed to show for the appointments. In June 2004, A-1 Concrete returned to the subject property to perform additional work, but did not pour the concrete. A-1 Concrete agreed to pour the concrete if Bullington dropped a pending civil suit against A-1 Concrete. Bullington later terminated the contract because A-1 Concrete would not complete the work.

During the IFF, M. Bullington stated he contacted A-1 Concrete regarding abandonment of the project because it had been more than 30 days since work was performed at the subject property. A-1 Concrete did return to the property after the 30 day period, but only removed the crushed up driveway and did not return to perform any additional work.

A-1 Concrete's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$1,000.00 and license revocation be imposed.

Count 3: Board Regulation (Effective January 1, 2003)

In August 2004, in the Chesapeake General District Court, Bullington obtained a judgment against A-1 Concrete, in the amount of \$1,400.00. A-1 Concrete has failed to satisfy the judgment.

During the IFF, M. Bullington stated they have conducted debtor's interrogatories and A-1 Concrete claimed it did not have any assets to satisfy the judgment.

A-1 Concrete's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. Therefore, I recommend a monetary penalty of \$1,000.00 and license revocation be imposed.

By: _____

Charles Falwell
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: September 30, 2004 (revised November 22, 2004)

FILE NUMBER: 2004-04937
RESPONDENT: Theresa Hayes Thornton, t/a A-1 Concrete
LICENSE NUMBER: 2705083399
EXPIRATION: March 31, 2006

SUBMITTED BY: Valerie J. Matney
APPROVED BY: David C. Dorner

COMMENTS:

None.

Theresa Hayes Thornton, t/a A-1 Concrete ("A-1 Concrete"), was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705083399).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On June 7, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Calvin Bullington ("Bullington") regarding A-1 Concrete. (Exh. C-1)

On April 13, 2004, A-1 Concrete entered into a written contract, in the amount of \$6,665.00, with Bullington to install a 11' x 122' driveway with apron end, a 10' x 42' driveway with apron end, sidewalk from the porch to the driveway, and two 8' sections of drain pipes at 1415 Hazel Avenue, Chesapeake, Virginia 23325. (Exh. C-2 and R-2)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - a. When work is to begin and the estimated completion date;
 - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - f. Disclosure of the cancellation rights of the parties;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
 - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by A-1 Concrete in the transaction failed to contain subsections: (a), (d), (e), (f), (h), and (i). (Exh. C-2 and R-2)

In a written response received July 27, 2004, Theresa Thornton ("Thorton") of A-1 Concrete stated, "I was unaware that a contract had to have all the information that was in your letter." (Exh. R-1)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

14. Abandonment (defined as the unjustified cessation of work under the contract for a period of 30 days or more).

FACTS:

On April 23, 2004, A-1 Concrete commenced work. (Exh. C-1)

On May 26, 2004, Bullington's son called A-1 Concrete regarding abandonment of the work. Between May 26, 2004 and June 1, 2004, A-1 Concrete scheduled appointments to pour concrete at the subject property, but A-1 Concrete failed to show for the appointments. (Exh. C-4)

On June 8, 2004, A-1 Concrete returned to the subject property to remove crush and run gravel from the driveway. (Exh. C-4)

On June 17, 2004, A-1 Concrete agreed to pour the driveways in exchange for Bullington dropping the civil suit. (Exh. C-4)

On July 1, 2004, Bullington called A-1 Concrete to inquire if A-1 Concrete would pour the driveways on July 2, 2004, but A-1 Concrete said no. On July 2, 2004, Bullington terminated A-1 Concrete. (Exh. C-4)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

On August 2, 2004, in the Chesapeake General District Court, Bullington was awarded a \$1,400.00 judgment against Thornton. The judgment was based on breach of contract and abandonment of the job. (Exh. I-3)

As of November 2, 2004, neither Thornton nor A-1 Concrete satisfied the judgment. (Exh. I-3)